

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

# IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION

MDL No. 1456

Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO:  
ALL CLASS ACTIONS

Judge Patti B. Saris

**SCHERING-PLOUGH CORPORATION'S AND WARRICK PHARMACEUTICALS  
CORPORATION'S OPPOSITION TO CLASS PLAINTIFFS' MOTION FOR  
AN ORDER APPROVING THE FORM AND MANNER OF CLASS NOTICE**

Defendants Schering-Plough Corporation (“Schering”) and Warrick Pharmaceuticals Corporation (“Warrick”) respectfully submit this opposition to Class Plaintiffs’ Motion for and Order Approving the Form and Manner of Class Notice (“Plaintiffs’ Motion”). Schering and Warrick adopt and incorporate herein the reasoning set forth in the memoranda authored by the other Track 1 Defendants, which are being filed today. Schering and Warrick also oppose Plaintiffs’ Motion for additional reasons.

First, Schering and Warrick must not appear in any notice as to Class 1. No class of Medicare beneficiaries has been certified against Schering or Warrick. *See In re Pharm. Indus. Average Wholesale Price Litig*, Consolidated Order re: Motion for Class Certification (Jan. 30, 2006). Plaintiffs' proposed notice, however, states that Schering and Warrick *are* a part of Class 1. Thus, separate notices should be required for each of the three classes.

Second, the Schering drug “Integrilin” should not appear in any of the notices because it is marketed exclusively to hospitals and, accordingly, has never been part of Dr. Hartman’s

damages analyses. *See, e.g.*, 12/15/2005 Decl. of Raymond Hartman, attached as Ex. 1 to Decl. of Steve W. Berman Supp. Pls.' Mem. Opp'n to Track 1 Defs.' Mot. Summ. J.

For these reasons, Schering and Warrick respectfully request that Plaintiffs' Motion be DENIED.

Schering-Plough Corporation and  
Warrick Pharmaceuticals Corporation

By their attorneys,

/s/ Eric P. Christofferson

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Dated: June 2, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Eric P. Christofferson  
Eric P. Christofferson